



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0157; FRL-9993-69-Region 2]

Approval of Air Quality Implementation Plans; New York; Cross-State Air Pollution Rule; NO_x Ozone Season Group 2, NO_x Annual, and SO₂ Group 1 Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the New York State Implementation Plan (SIP) addressing requirements of the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR, large electricity generating units in New York are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR federal trading programs for ozone season emissions of nitrogen oxides (NO_x), annual emissions of NO_x, and annual emissions of sulfur dioxide (SO₂). This action approves into New York's SIP the State's regulations that replace the default allowance allocation provisions of the CSAPR federal trading programs for ozone season NO_x, annual NO_x, and annual SO₂ emissions. The approval is being issued as a direct final rule without a prior proposed rule because EPA views it as uncontroversial and does not anticipate adverse comment.

DATES: This direct final rule will be effective on **[Insert date 30 days after date of publication in the Federal Register]**, without further notice, unless the EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID number **EPA-R02-OAR-2019-0157**, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

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I. What action is EPA taking today?

The EPA is taking direct final action to approve New York's November 30, 2018 SIP submittal concerning CSAPR¹ trading programs for ozone-season emissions of NO_x, annual emissions of NO_x, and annual emissions of SO₂. Large Electric Generating Units (EGUs) in New York are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO_x Ozone Season Group 2 Trading Program, the federal CSAPR NO_x Annual Trading Program, and the federal CSAPR SO₂ Group 1 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace certain provisions of the CSAPR FIPs while the remaining FIP provisions continue to apply. This type of CSAPR SIP is termed an abbreviated SIP.

The New York State Department of Environmental Conservation (DEC) amended portions of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) to incorporate CSAPR requirements into the State's rules and allow the DEC to allocate CSAPR allowances to regulated entities in New York. 6 NYCRR Part 243, "Transport Rule NO_x Ozone Season Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NO_x Ozone Season Group 2 Trading Program." 6 NYCRR Part 244, "Transport Rule NO_x Annual Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 244, "CSAPR NO_x Annual Trading

¹ Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

Program.” 6 NYCRR Part 245, “Transport Rule SO₂ Group 1 Trading Program,” has also been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 245, “CSAPR SO₂ Group 1 Trading Program.” Attendant revisions were made to 6 NYCRR Part 200, “General Provisions,” to update the list of referenced materials at Subpart 200.9 that are cited in the amended New York regulations. The EPA is taking direct final action to approve into the New York SIP the revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 submission.

The EPA is also taking direct final action to repeal from the SIP previous versions of 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 which implemented New York’s discontinued CAIR program. New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced CAIR trading program rules with CSAPR trading rules on November 10, 2015. Subsequently, on November 11, 2018, New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced the November 15, 2015 adopted rules that implemented New York’s CSAPR program with new versions of New York’s CSAPR trading program rules. The rules being repealed from the SIP are 6 NYCRR Part 243, “CAIR NO_x Ozone Season Trading Program,”; 6 NYCRR Part 244, “CAIR NO_x Annual Trading Program,”; and 6 NYCRR Part 245, “CAIR SO₂ Trading Program.”

The EPA is also taking direct final action to approve into the SIP a revised version of 6 NYCRR Part 200 (Subpart 200.1) that was submitted to the EPA on July 23, 2015 to address updated definitions at Part 200.1(f) that were associated with a repeal of 6 NYCRR Part 203, “Indirect Sources of Air Contamination.”

The revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 SIP submission replace the previous versions of those rules that were included in a December 1, 2015 SIP submission. The EPA identified deficiencies in the December 1, 2015 submission but on November 20, 2017 conditionally approved those previous versions of Parts 200, 244, and 245

(but not Part 243) into the SIP (82 FR 57362, December 5, 2017). In a July 6, 2017 letter to the EPA, New York committed to submitting a SIP revision that addressed the identified deficiencies by December 29, 2017. However, New York's response to the conditional approval was not submitted to the EPA by December 29, 2017. The November 30, 2018 SIP submittal addresses the identified deficiencies, but was submitted approximately 11 months late, so the conditional approval is treated as a disapproval.²

The EPA did not take action on the previous version of 6 NYCRR Part 243, "Transport Rule NOx Ozone Season Trading Program," included in New York's December 1, 2015 submission. Following that submission, the EPA finalized the CSAPR Update rule³ to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Among other things, starting in 2017, the CSAPR Update rule required New York EGUs to participate in the new CSAPR NOxOzone Season Group 2 Trading Program instead of the earlier CSAPR NOx Ozone Season Trading Program (now renamed the "Group 1" program) and replaced the ozone season budget for New York with a lower budget developed to address the revised and more stringent 2008 Ozone NAAQS. In a July 14, 2016 letter to the EPA, New York indicated that the State would revise 6 NYCRR Part 243 to conform with the final CSAPR Update. As indicated earlier in this section New York repealed 6 NYCRR Part 243 and replaced the rule in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NOx Ozone Season Group 2 Trading Program".

This direct final action approves into New York's SIP state-determined allowance allocation procedures for ozone-season NOx allowances that would replace EPA's default allocation procedures for the control periods in 2021 and beyond. Additionally, EPA is taking direct final action to approve

² In reliance on the December 5, 2017 conditional approval, allocations of CSAPR NOx Annual and CSAPR SO₂ Group 1 allowances for the 2017, 2018, 2019, and 2020 control periods were based on the state-determined allocation methodology. Following the state's failure to submit by December 29, 2017, allocations of allowances for those programs for the 2021 and 2022 control periods were based on the default allowance allocation provisions in the federal trading program regulations.

³ 81 FR 74504 (October 26, 2016).

into New York's SIP state-determined allowance allocation procedures for annual NO_x and SO₂ allowances that would replace EPA's default allocation procedures for the control periods in 2023 and beyond. The approval of this SIP revision does not alter any provision of either the CSAPR NO_x Ozone Season Group 2 Trading Program, the CSAPR NO_x Annual Trading Program, or the CSAPR SO₂ Group 1 Trading Program as applied to New York units other than the allowance allocation provisions. The FIP provisions requiring those units to participate in the programs (as modified by this SIP revision) remain in place.

Section II of this document summarizes relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific criteria for approval of such SIP revisions. Section IV contains the EPA's analysis of New York's SIP submittal, and Section V sets forth EPA's action on New York's submittals.

II. Background on CSAPR and CSAPR-related SIP revisions

The EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including the 2016 CSAPR Update), CSAPR requires 27 Eastern states to limit their statewide emissions of SO₂ and/or NO_x to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, the 1997 Ozone NAAQS, and the 2008 Ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone season NO_x by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016, and the Phase 2 (and

CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: a program for annual NO_x emissions, two geographically separate programs for annual SO₂ emissions, and two geographically separate programs for ozone season NO_x emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. The CSAPR FIP provisions require each state's EGUs to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and the EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.⁴ Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing criteria and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season NO_x emissions (or integrated state trading programs), a state may also expand trading program applicability to include certain smaller EGUs.⁵ If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

⁴ See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

⁵ States covered by both the CSAPR Update and the NO_x SIP Call have the additional option to expand applicability under the CSAPR NO_x Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the former NO_x Budget Trading Program.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.⁶ Specific criteria for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative – an “abbreviated” SIP revision – a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.⁷ Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state’s units.

Under the second alternative – a “full” SIP revision – a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.⁸ For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon the EPA’s approval of a full SIP revision as correcting the deficiency in the state’s SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state’s jurisdiction without the need for a separate EPA withdrawal

⁶ CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

⁷ § 52.38(a)(4), (b)(4), (b)(8); § 52.39(e), (h).

⁸ § 52.38(a)(5), (b)(5), (b)(9); § 52.39(f), (i).

action, so long as the EPA's approval of the SIP is full and unconditional.⁹ Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, the EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.¹⁰ Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing the EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless the EPA's approval of the SIP revision provides otherwise.¹¹

III. Criteria for approval of CSAPR-related SIP revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal criteria:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal trading program, the complete SIP revision must be submitted to the EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.¹² This SIP

⁹ § 52.38(a)(6), (b)(10)(i); § 52.39(j).

¹⁰ § 52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(9)(vi)-(vii), (b)(10)(i); § 52.39(f)(4)-(5), (i)(4)-(5), (j).

¹¹ § 52.38(a)(7), (b)(11)(i); § 52.39(k).

¹² 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii), (b)(8)(iv), (b)(9)(viii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program. The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal criteria, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further criteria:

- *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the federal program's default allocations to existing units¹³ at 40 CFR 97.411(a), 97.511(a), 97.611(a), 97.711(a), or 97.811(a) as applicable, and the federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), 97.711(b)(1) and 97.712(a), or 97.811(b)(1) and 97.812(a), as applicable.¹⁴ In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.¹⁵

¹³ In the context of the approval criteria for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. Spreadsheets showing EPA's default allocations to existing units are posted at <https://www.epa.gov/csapr/unit-level-allocations-under-csapr-transport-rule-fips-after-tolling> and <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.

¹⁴ § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii), (b)(8)(iii), (b)(9)(iii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

¹⁵ See §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii), 97.812(b)(10)(ii).

- Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) generally may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.¹⁶ Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder. Under the CSAPR NO_x Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-EGUs that would have been subject to the former NO_x Budget Trading Program established for compliance with the NO_x SIP Call.¹⁷
- Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to the EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines shown in Tables 1 and 2 below.¹⁸ Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

¹⁶ § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A), (b)(8)(iii)(A), (b)(9)(iii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

¹⁷ § 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

¹⁸ § 52.38(a)(4)(i)(B)-(C), (a)(5)(i)(B)-(C), (b)(4)(ii)(B)-(C), (b)(5)(ii)(B)-(C), (b)(8)(iii)(B)-(C), (b)(9)(iii)(B)-(C); § 52.39(e)(1)(ii)-(iii), (f)(1)(ii)-(iii), (h)(1)(ii)-(iii), (i)(1)(ii)-(iii).

Table 1

CSAPR NO_x Annual, CSAPR NO_x Ozone Season Group 1, CSAPR SO₂ Group 1, and CSAPR SO₂ Group 2 Trading Programs:		
Units	Year of the Control Period	Deadline for Submission to EPA of Allocations or Auction Results
Existing	2017 and 2018	June 1, 2016
	2019 and 2020	June 1, 2017
	2021 and 2022	June 1, 2018
	2023 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

Table 2

CSAPR NO_x Ozone Season Group 2 Trading Program:		
Units	Year of the Control Period	Deadline for Submission to EPA of Allocations or Auction Results
Existing	2019 and 2020	June 1, 2018
	2021 and 2022	June 1, 2019
	2023 and 2024	June 1, 2020
	2025 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.¹⁹
- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.²⁰ Any new definitions adopted in the

¹⁹ § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D), (b)(8)(iii)(D), (b)(9)(iii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

²⁰ § 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); § 52.39(e), (f), (h), (i).

SIP revision (in addition to the federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.²¹

In addition to the general submittal criteria, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under their integrated state trading programs (which is allowed for CSAPR's NO_x ozone season programs only) must meet the following further criteria:

- *Only EGUs with nameplate capacity of at least 15 MWe*²². The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.²³ In addition or alternatively, applicability may be extended to non-EGUs that would have been subject to the former NO_x Budget Trading Program established for compliance with the NO_x SIP Call.²⁴
- *No other substantive changes to federal trading program provisions*. The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.²⁵

In addition to the general submittal criteria and the other applicable criteria described above, a CSAPR-related full SIP revision must meet the following further criteria:

²¹ § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii), (b)(8)(iv), (b)(9)(iv); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

²² Megawatts of electricity

²³ § 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

²⁴ § 52.38(b)(8)(ii), (b)(9)(ii).

²⁵ § 52.38(b)(4), (b)(5), (b)(8), (b)(9).

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, 97.702 through 97.735, or 97.802 through 97.835, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.²⁶
- *Only non-substantive substitutions for the term “State.”* The SIP revision may substitute the name of the state for the term “State” as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.²⁷

²⁶ § 52.38(a)(5), (b)(5), (b)(9); § 52.39(f), (i).

²⁷ §§ 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not impose requirements on any unit in any Indian country within the state's borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.²⁸

IV. New York's submittals and EPA's analysis

A. New York's SIP submittals

On November 30, 2018, New York submitted to the EPA an abbreviated SIP revision that, if approved, would replace the default allowance allocation provisions of the CSAPR NO_x Ozone Season Group 2, CSAPR NO_x Annual, and CSAPR SO₂ Group 1 Trading Programs for the state's EGUs with provisions establishing state-determined allocations but would leave the corresponding CSAPR FIPs and all other provisions of the trading programs in place.

New York's allowance allocation procedures for ozone season NO_x allowances would replace EPA's default allocation procedures for the control periods in 2021 and beyond. New York's allowance allocation procedures for annual NO_x and SO₂ allowances would replace EPA's default allocation procedures for the control periods in 2023 and beyond.

The November 30, 2018 SIP submittal includes the following adopted state rules: 6 NYCRR Part 243, "CSAPR NO_x Ozone Season Group 2 Trading Program," 6 NYCRR Part 244, "CSAPR NO_x Annual Trading Program," and 6 NYCRR Part 245, "CSAPR SO₂ Group 1 Trading Program." Previous versions of the rules, i.e., 6 NYCRR Part 243, "Transport Rule NO_x Ozone Season Trading Program," 6 NYCRR Part 244, "Transport Rule NO_x Annual Trading Program," and 6 NYCRR Part 245, "Transport Rule SO₂ Group 1 Trading Program," have been repealed and replaced in their entirety with the new

²⁸ §§ 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

rules. Attendant revisions were made to 6 NYCRR Part 200, Subpart 200.9, “General Provisions, Referenced Material,” to update the list of referenced material that are cited in the amended New York regulations. The regulations were adopted on November 11, 2018, and effective on January 2, 2019. New York’s Parts 243, 244 and 245, submitted to EPA on November 30, 2018, allow the State to replace the provisions of the CSAPR NO_x Ozone Season Group 2, CSAPR NO_x Annual, and CSAPR SO₂ Group 1 trading program allocation methodology with its own methodology. Parts 243, 244 and 245 apply to units that serve an electrical generator with a nameplate capacity equal to or greater than 25 megawatts of electrical output and sell any amount of electricity. The control period for Part 243 runs from May 1 to September 30. The control periods for Parts 244 and 245 run from January 1 to December 31. DEC would allocate CSAPR NO_x Ozone Season Group 2 allowances beginning with the 2021 control period; and CSAPR NO_x Annual and SO₂ Group 1 allowances beginning with the 2023 control period.

For existing units, New York’s allocation methodology is based on the average of recent emissions (i.e., the average of the three last years for which data is available) from all New York Transport Rule units. Five percent of the statewide budgets for annual emissions of SO₂, annual emissions of NO_x, and ozone season emissions of NO_x would be set aside for new units, and the remainder of the statewide budgets, but at least ten percent, will be allocated to the Energy Efficiency and Renewable Energy Technology (EERET) account. If the allocation to the EERET account would be less than the prescribed minimum after allocations to existing units based on the 3-year average of emissions and an allocation of five percent to the new unit set-aside, allocations to existing units would be reduced proportionally by the amounts necessary to ensure that ten percent of the budget is allocated to the EERET account.

The DEC will distribute all allowances at no cost except for allowances held in the EERET account, which will be administered by the New York State Energy Research and Development Authority (NYSERDA). The sale of allowances by NYSERDA will be used to fund energy efficiency projects,

renewable energy, or clean energy technology. Any EERET allowances that are not sold or distributed by NYSERDA within 12 months of the initial allocation to the EERET account will be returned to the DEC for retirement or reallocation.

On July 23, 2015, New York submitted a SIP submittal, which included a revised version of 6 NYCRR Part 200 (Subpart 200.1) that was adopted by the State. The definition for “Air contamination source or emission source” under Subdivision 200.1(f) was revised to address the repeal of 6 NYCRR Part 203, “Indirect Sources of Air Contamination”. The regulation was adopted on April 18, 2013, a notice of adoption was filed on April 19, 2013, and the regulation became effective on May 19, 2013.

B. EPA’s Analysis of New York’s Submittals

A. November 30, 2018 Submittal

1. Timeliness and Completeness of New York’s SIP Submittal

New York’s SIP revision seeks to establish state-determined allocations starting with the 2021 control period for the CSAPR NO_x Ozone Season Group 2 trading program and the 2023 control period for the CSAPR NO_x Annual and SO₂ Group 1 trading programs. For the NO_x Annual and SO₂ Group 1 trading programs, under 40 CFR 52.38(a)(4)(i)(B) and 52.39(e)(1)(ii), the deadline for submission of state-determined allocations for the 2023 control periods is June 1, 2019, which under 52.38(a)(4)(ii) and 52.39(e)(2) makes December 1, 2018, the deadline for submission to the EPA of a complete SIP revision establishing state-determined allocations for those control periods. For the NO_x Ozone Season Group 2 trading program, under 40 CFR 52.38(b)(8)(iii)(B) the allocation submission deadline for the 2021 control period is June 1, 2019, triggering a December 1, 2018 deadline for a SIP submittal under 40 CFR 52.38(b)(8)(iv). New York submitted its SIP revision to EPA by letter dated and delivered electronically on November 30, 2018, and EPA has determined that the submittal complies with the applicable minimum completeness criteria of 40 CFR part 51, Appendix V, Section 2.1. New York has

therefore met the requirements for timeliness and completeness criteria of its CSAPR SIP submittal for all three programs.

2. Methodology covering all allowances potentially requiring allocation

Sections 243.3 through 243.6, 244.3 through 244.6, and 245.3 through 245.6 of the New York rules provide the allocation methodology adopted by New York in the SIP revision. Sections 243.3 through 243.6 replace the provisions of 40 CFR 97.811(a), 97.811(b)(1), and 97.812(a) for allocations of CSAPR NO_x Ozone Season Group 2 allowances; Sections 244.3 through 244.6 replace the provisions of 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a) for allocations of NO_x Annual allowances; and Sections 245.3 through 245.6 replace the provisions of 40 CFR 97.611(a), 97.611(b)(1), and 97.612(a) for allocations of SO₂ Group 1 allowances. New York's methodology addresses allocation of allowances that under the default allocation provisions for the federal trading programs would be allocated to existing units as well as allowances that would be allocated to new units from the new unit set-asides established for New York under the federal trading programs. New York's rules also include provisions for the disposition of any otherwise unallocated Indian country new unit set-aside allowances. New York's rules therefore meet the conditions under 40 CFR 52.38(a)(4)(i), 52.38(b)(8)(iii), 52.39(e)(1), 97.412(b)(10)(ii), 97.612(b)(10)(ii), and 97.812(b)(10)(ii) that the state's allocation methodology must cover all allowances potentially requiring allocation by the state.

3. Assurance that total allocations will not exceed the state budget

Sections 243.3, CSAPR NO_x Ozone Season Group 2 Trading Program budgets, 244.3, CSAPR NO_x Annual Trading Program budgets, and 245.3, CSAPR SO₂ Group 1 Trading Program budgets, set forth the total amounts of CSAPR NO_x Ozone Season Group 2 allowances, CSAPR NO_x Annual allowances,

and CSAPR SO₂ Group 1 allowances to be allocated to New York units for each control period under the state trading programs.

Section 243.3 provides for allowance allocations equal to New York's NO_x Ozone Season Group 2 trading budget at 40 CFR 97.810(a)(15), which is 5,135 tons, less the amount of the Indian country new unit set-aside (5 tons). Section 244.3 provides for allowance allocations equal to New York's NO_x Annual trading budget at 40 CFR 97.410(a)(14), which is 21,722 tons, less the amount of the Indian country new unit set-aside (22 tons). Section 245.3 provides for allowance allocations equal to New York's SO₂ Group 1 budget at 40 CFR 610(a)(9), which is 27,556 tons, less the amount of the Indian country new unit set-aside (28 tons). EPA has not yet allocated or recorded any allowances to New York units for the control periods for which New York's rules would establish a state-determined allocation methodology. The allocation methodology in New York's SIP revision, therefore, meets the conditions under 40 CFR 52.38(a)(4)(i)(A), 52.38(b)(8)(iii)(A), and 52.39(e)(1)(i) that the total amount of allowances allocated under the SIP revision may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by the EPA.

4. Timely submission of state-determined allocations to EPA

Sections 243.4, 244.4, and 245.4 provide for allowance allocations for existing units to be submitted to the EPA. With respect to CSAPR NO_x Ozone Season Group 2 allowance allocations for existing units, Section 243.4 provides that New York will submit allocations for the 2021 and 2022 control periods by June 1, 2019; the state will submit allocations for the 2023 and 2024 control periods by June 1, 2020; and by June 1, 2021, and June 1st of each year thereafter, the state will submit allocations for the control period in the fourth year following the year of the submission deadline. With respect to CSAPR NO_x Annual and CSAPR SO₂ Group 1 allowance allocations for existing units, Sections 244.4

and 245.4 provide that the state will submit allocations by June 1, 2019,²⁹ and by June 1st of each year thereafter, for the control period in the fourth year following the year of the submission deadline.

With respect to NUSA allowance allocations under all three programs, Sections 243.5(a)(7), 244.5(a)(7), and 245.5(a)(7) indicate that the state will submit state-determined allocations to the EPA by July 1st of the control period.

New York's SIP revision meets the criteria under 40 CFR 52.38(a)(4)(i)(B)-(C), 52.38(b)(8)(iii)(B)-(C), and 52.39(e)(1)(ii)-(iii) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No changes to allocations already submitted to EPA or recorded

The New York rules include no provisions allowing alteration of allocations after the allocation amounts have been provided to the EPA and no provisions allowing alteration of any allocations made and recorded by the EPA under the federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(4)(i)(D), 52.38(b)(8)(iii)(D), and 52.39(e)(1)(iv).

6. No other substantive changes to federal trading program provisions

In addition to the allowance allocation provisions in New York's rules, Sections 243.1, 244.1 and 245.1 address applicability and Sections 243.2, 244.2, and 245.2 set forth relevant definitions. The applicability provisions and most of the definitions directly reference the corresponding provisions in the federal trading program regulations, and the remaining definitions do not conflict with the definitions in the federal trading program regulations. The EPA has therefore determined that the SIP revision meets the requirements of 40 CFR 52.38(a)(4), 52.38(b)(8), and 52.39(e) by making no

²⁹ Allowance allocations for the 2023 control period would be submitted by June 1, 2019.

substantive changes to the federal trading program regulations beyond the provisions addressing allowance allocations.

Finally, as stated in section I, the EPA conditionally approved previous versions of 6 NYCRR Parts 200, 244 and 245 in an action published on December 5, 2017 (82 FR 57362), but the state did not submit a revised SIP that addressed EPA-identified deficiencies within the required time frame New York's November 30, 2018 SIP revision approved in this direct final action does fully address the deficiencies that the EPA identified in the December 5, 2017 final action.

7. Removal of CAIR trading program provisions

As discussed earlier, New York's CSAPR rules were adopted to replace previous versions of 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 which implemented New York's discontinued CAIR trading programs. For the reasons discussed below, the EPA is also taking direct final action to approve the removal of New York's CAIR rules from the SIP. The rules being removed from the SIP are 6 NYCRR Part 243, "CAIR NO_x Ozone Season Trading Program,"; 6 NYCRR Part 244, "CAIR NO_x Annual Trading Program,"; and 6 NYCRR Part 245, "CAIR SO₂ Trading Program." All three of the CAIR trading programs have been discontinued and are no longer operated by EPA. Electricity generating units (EGUs) in New York now participate in the CSAPR NO_x Ozone Season Group 2 Trading Program, CSAPR NO_x Annual Trading Program, and CSAPR SO₂ Group 1 Trading Program.

In 2005, EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states' nonattainment and interfered with maintenance of the 1997 ozone and PM_{2.5} NAAQS. CAIR required 28 states, including New York, to revise their SIPs to reduce emissions of NO_x and SO₂, precursors to the formation of ambient ozone and PM_{2.5}. Under CAIR, EPA provided model state rules for separate cap-and-trade programs for annual NO_x, ozone

season NO_x, and annual SO₂. New York submitted, and EPA approved, a CAIR SIP revision based on the model state rules establishing CAIR state trading programs for annual SO₂, annual NO_x, and ozone season NO_x emissions, with certain non-EGUs included in the state's CAIR ozone season NO_x trading program. See 73 FR 4109 (January 24, 2008).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 531 F.3d 896, modified, 550 F.3d 1176 (2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR in order to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS. CSAPR promulgated FIPs requiring EGUs in affected states, including New York, to participate in federal trading programs to reduce annual SO₂, annual NO_x, and/or ozone season NO_x emissions. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements.

CSAPR was intended to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by subsequent litigation. CSAPR implementation was stayed during the course of litigation in the D.C. Circuit and the Supreme Court, until the D.C. Circuit lifted the stay on October 23, 2014. EPA subsequently issued an interim final rule on December 3, 2014 (79 FR 71663),

setting the updated effective date of CSAPR as January 1, 2015.³⁰ In accordance with the interim final rule, EPA stopped administering the CAIR state and federal trading programs with respect to emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.

EPA has not administered the CAIR trading programs since January 1, 2015, when the CSAPR trading programs replaced the CAIR trading programs. The provisions in New York's SIP which were promulgated and approved for purposes of implementing the CAIR trading programs in the State have not been implemented since that time and cannot be implemented now or in the future. Because the EPA no longer administers the CAIR trading programs, and therefore New York's own CAIR trading program regulations cannot be implemented, removing New York's CAIR rules from the state's SIP will have no consequences for any source's operations or emissions or for the attainment and maintenance of the NAAQS in any area, now or in the future. Accordingly, removal of the CAIR rules does not impact the state's continued compliance with section CAA 110(a)(2)(D)(i)(I) for any NAAQS. Moreover, consistent with CAA section 110(l), the EPA has determined that the removal of New York's CAIR trading program rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Clean Air Act.

Current emission levels in New York further demonstrate that the CAIR trading programs are not influencing and would not influence affected sources' operations. As shown in Table 3 below, current emissions levels are significantly below the CAIR budgets even while the CAIR trading programs are no longer being implemented.

Table 3 – Comparison of New York CAIR Budgets and 2018 Emissions (tons)

³⁰ EPA solicited comment on the interim final rule and subsequently issued a final rule affirming the amended compliance schedule after consideration of comments received. 81 FR 13275 (March 14, 2016).

Type of emissions	CAIR phase I budget ¹	CAIR phase 2 budget ¹	2018 emissions ²
Ozone season NO _x ³	31,091	27,652	5,790
Annual NO _x	45,617	38,014	9,706
SO ₂	135,139	94,597	4,889

¹ The CAIR budget amounts are from the EPA's proposal to approve New York's CAIR regulations into the SIP. 72 FR 55723 (Oct. 1, 2007); *see also* 73 FR 4109 (Jan. 24, 2008) (finalizing approval).

² The 2018 emissions totals are from the EPA's Air Markets Program Database, <https://ampd.epa.gov>.

³ The ozone season NO_x budgets and emissions include both EGUs and non-EGUs meeting the applicability criteria for New York's former NO_x Budget Trading Program.

EGUs in New York also remain subject to FIPs, as modified by the abbreviated SIPs approved in this direct final action, requiring the sources to particulate in annual NO_x, annual SO₂, and ozone season NO_x³¹ federal trading programs under CSAPR and the CSAPR Update that limit emissions from such sources in the State. EGUs also continue to be subject to part 75 monitoring requirements under the current CSAPR trading program rules.

The EPA notes that New York's CAIR trading program for ozone season NO_x addressed not only the state's transport obligation under the 1997 ozone NAAQS, but also New York's ongoing obligations under the NO_x SIP Call.³² Under the NO_x SIP Call the New York SIP must (1) include enforceable control measures for ozone season NO_x mass emissions from large EGUs and large non-

³¹ The D.C. Circuit ultimately remanded New York's CSAPR Phase 2 budget for ozone season NO_x, finding that the rulemaking record did not support EPA's determination of a transport obligation under the 1997 ozone NAAQS for New York. *EME Homer City Generation, L.P., v. EPA*, 795 F.3d 118, 129–30, (2015). In response, EPA withdrew New York's remanded budget in the CSAPR Update rulemaking; concurrently, however, EPA promulgated a new emission budget to address the 2008 ozone NAAQS, which replaced the invalidated CSAPR budget intended to address the 1997 ozone NAAQS. 81 FR 74524. Thus, EGUs in New York remain subject to a CSAPR trading program for ozone-season NO_x.

³² The NO_x SIP Call addresses states' transport obligations under the 1979 ozone NAAQS.

EGUs and (2) require those sources to monitor and report ozone season NO_x emissions, which may be in accordance with 40 CFR part 75. See 40 CFR 51.121(f)(2) and (i).

With respect to the NO_x SIP Call requirement that the SIP include enforceable control measures to limit ozone season NO_x, New York is currently subject to the federal CSAPR trading program for ozone season NO_x that addresses these requirements as to EGUs, but because New York's non-EGUs are not subject to that CSAPR trading program, the state must meet this requirement for non-EGUs through other SIP provisions. New York's SIP has not included enforceable control measures for these non-EGUs since 2015, when EPA began implementing the CSAPR trading programs and stopped administering the CAIR trading programs. Thus, this gap in SIP coverage was caused by EPA's discontinuation of the CAIR trading programs and predates the SIP submittal at issue in this action. Removing the state's CAIR rules from the SIP at this time will not exacerbate or otherwise affect this pre-existing lack of enforceable control measures in the SIP, and as noted above, the removal will have no impact on source operations or emissions.

As to the requirement for sources to monitor and report ozone season NO_x emissions under the NO_x SIP Call, removal of the state's CAIR rules from the state's SIP does not eliminate the state's current requirements for EGUs and non-EGUs to monitor and report their ozone season NO_x emissions, as required under the NO_x SIP Call. New York's SIP still includes the state's NO_x Budget Trading Program rules, and those rules continue to require, at 6 NYCRR Part 204, that EGUs and non-EGUs monitor and report ozone season NO_x emissions under part 75 even though EPA is no longer administering the trading program provisions of the state's rules. Thus, removal of the state's CAIR rules for ozone season NO_x emissions from New York's SIP will not eliminate the provisions for monitoring that are required by the NO_x SIP Call because the SIP will still include equivalent ozone season NO_x monitoring provisions in the state's NO_x Budget Trading Program rules.

Accordingly, EPA finds that it is appropriate to approve the rescission of New York's CAIR rules from the SIP.

B. July 23, 2015 Submittal

The July 23, 2015 New York SIP submittal included a revised version of 6 NYCRR Part 200 (Subpart 200.1), which modified the definition of "Air contamination source or emission source" at Subdivision 200.1(f). The regulation was adopted on April 18, 2013, the notice of adoption was filed on April 19, 2013 and regulation became effective on May 19, 2013. The SIP submittal was deemed administratively complete by operation of law on January 23, 2016. The EPA is taking direct final action to approve the July 23, 2015 SIP submittal.

V. EPA's Action on New York's submittals

The EPA is taking direct final action to approve the New York SIP revision submitted on November 30, 2018 concerning allocations to New York units of CSAPR NO_x Ozone Season Group 2 allowances for the control periods in 2021 and beyond and of CSAPR NO_x Annual allowances and CSAPR SO₂ Group 1 allowances for the control periods in 2023 and beyond. This rule approves into the New York SIP amendments to 6 NYCRR Parts 243, 244 and 245 that incorporate CSAPR requirements into the State rules and allows the DEC to allocate CSAPR allowances to regulated entities in New York. The EPA is also taking direct final action approving the attendant revisions to 6 NYCRR Part 200 (Subpart 200.9) to update the list of referenced materials cited in the amended New York regulations. The EPA is taking direct final action to approve the New York SIP revision submitted on July 23, 2015, which included a revised version of 6 NYCRR Part 200 (Subpart 200.1) to address updated definitions associated with a repeal of 6 NYCRR Part 203, "Indirect Sources of Air Contamination".

The EPA is also taking direct final action to repeal from the SIP previous versions of 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 which implemented New York's discontinued CAIR trading program. The rules being repealed from the SIP are 6 NYCRR Part 243, "CAIR NO_x Ozone Season Trading Program,"; 6 NYCRR Part 244, "CAIR NO_x Annual Trading Program,"; and 6 NYCRR Part 245, "CAIR SO₂ Trading Program."

Following the approval into the SIP of the revisions to 6 NYCRR Parts 200, 243, 244, and 245, allocations of CSAPR NO_x Ozone Season Group 2 allowances, CSAPR NO_x Annual allowances, and CSAPR SO₂ Group 1 allowances will be made according to the provisions of New York's SIP instead of 40 CFR 97.411(a), 97.411(b)(1), 97.412(a), 97.611(a), 97.611(b)(1), 97.612(a), CFR 97.811(a), 97.811(b)(1), and 97.812(a). The EPA's action on this SIP revision does not alter any provisions of the federal CSAPR NO_x Ozone Season Group 2 Trading Program, the federal CSAPR NO_x Annual Trading Program, and the federal CSAPR SO₂ Group 1 Trading Program as applied to New York units other than the allowance allocation provisions, and the FIPs requiring the units to participate in the programs (as modified by this SIP revision) remain in place. The EPA's is approving Parts 200, 243, 244 and 245 because New York's rules meet the requirements of the CAA and EPA's regulations for an abbreviated SIP revision and will replace EPA's default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV.A above.

VI. Incorporation By Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revisions to 6 NYCRR Parts 200, Subpart 200.1, entitled "General Provisions, Definitions," adopted April 18, 2013; 6 NYCRR Part 200, Subpart 200.9, entitled "General Provisions, Referenced Material," adopted on November 11, 2018; 6 NYCRR Part 243, entitled "CSAPR NO_x Ozone Season Group 2

Trading Program,” adopted November 11, 2018; 6 NYCRR Part 244, entitled “CSAPR NO_x Annual Trading Program,” adopted November 11, 2018; and NYCRR Part 245, entitled “CSAPR SO₂ Group 1 Trading Program,” adopted November 11, 2018. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov, and at the EPA Region 2 Office. Copies of materials incorporated may be inspected at the Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007. Please contact the person identified in the “For Further Information Contact” section of this preamble for more information. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update of the SIP compilation.³³

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP

³³ 62 Fed. Reg. 27968 (May 22, 1997)

approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: May 2, 2019.

Peter D. Lopez,
Regional Administrator,
Region 2.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart HH—New York

2. In §52.1670, paragraph (c) is amended by revising the table entries “Title 6, Part 200, Subpart 200.1”, “Title 6, Part 200, Subpart 200.9”, “Title 6, Part 243”, “Title 6, Part 244”, and “Title 6, Part 245” to read as follows:

§52.1670 Identification of plan.

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(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 200, Subpart 200.1	General Provisions, Definitions	05/19/2013	[insert date of publication in the Federal Register]	<p>The word odor is removed from the Subpart 200.1(d) definition of “air contaminant or air pollutant.”</p> <p>Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.</p> <p>Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.</p> <p>EPA is including the definition of “federally enforceable” with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to “avoid” applicable requirements.</p> <ul style="list-style-type: none"> • EPA is approving incorporation by reference of those documents that are not already federally enforceable. • EPA approval finalized at [insert Federal Register citation]

* * * * *				
Title 6, Part 200, Subpart 200.9	General Provisions, Referenced Material	01/02/2019	[insert date of publication in the Federal Register]	<ul style="list-style-type: none"> • EPA is approving reference documents that are not Federally enforceable. • EPA approval finalized at [insert Federal Register citation]
* * * * *				
Title 6, Part 243	CSAPR NO _x Ozone Season Group 2 Trading Program	01/02/2019	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation]
Title 6, Part 244	CSAPR NO _x Annual Trading Program	01/02/2019	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation]
Title 6, Part 245	CSAPR SO ₂ Group 1 Trading Program	01/02/2019	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation]
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[FR Doc. 2019-10479 Filed: 5/20/2019 8:45 am; Publication Date: 5/21/2019]